UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte MARC ALEXANDER NAJORK

Appeal No. 2006-0507
Application No. 09/706,198[1]



ON BRIEF

Before JERRY SMITH, SAADAT, and MACDONALD, Administrative Patent Judges.

SAADAT, Administrative Patent Judge.

## DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-4 and 6-18. Claim 5 has been canceled.

We reverse.

## BACKGROUND

Appellant's invention is directed to an apparatus and method for downloading data set addresses from a plurality of host computers using a plurality of web crawlers. According to

[1] Application for patent filed November 3, 2000.

Appellant, as the number of documents or URL's to download and process increases, finding and downloading documents becomes too demanding for a single web crawler (specification, page 2). Appellant provides for efficient downloading of data using a plurality of web crawlers. An understanding of the invention can be derived from a reading of exemplary independent claim 1, which is reproduced as follows:

1. A method of downloading data sets by a plurality of web crawlers from among a plurality of host computers, comprising the steps of:

assigning a web crawler identifier to each one of the plurality of web crawlers;

for each respective web crawler:

downloading at least one data set that includes addresses of one of more referred data sets;

identifying the addresses of the one or more referred data sets, wherein each identified address includes a host computer identifier;

for each identified address:

generating a representation of the host computer identifier;

determining a web crawler identifier to which the representation corresponds; and

when the determined web crawler identifier is not assigned to the respective web crawler, sending the identified address to the web crawler to which the determined web crawler identifier is assigned.

The Examiner relies on the following references:

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|---|---|---|
| Eichstaedt et al. (Eichstaedt) | 6,182,085 | Jan. 30, 2001 (filed May 28, 1998) |
| Najork et al. (Najork) | 6,377,984 | Apr. 23, 2002 (filed Nov. 2, 1999) |

Allan Heydon et al. (Heydon), "Mercator: A Scalable, extensible Web Crawler," World Wide web 2, 1999, pp. 219-229.

Claims 1, 6 and 10 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Heydon.

Claims 1-4 and 6-14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Najork.

Claims 1-4 and 6-14 stand rejected under 35 U.S.C. § 102(f) because Appellant did not invent the claimed subject matter.

Claims 1-4 and 6-14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Eichstaedt.

Claims 15-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Eichstaedt and Najork.

Rather than reiterate the opposing arguments, reference is made to the brief and answer for the respective positions of Appellant and the Examiner. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the brief have not been considered (37 CFR § 41.37(c)(1)(vii)).

OPINION

Initially, we note that a rejection for anticipation requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. See Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

35 U.S.C. § 102(a) rejection of claims 1, 6 and 10 over Heydon

With respect to the 35 U.S.C. § 102 rejection of the claims, Appellant argues that the "threads" disclosed in Heydon are not the same as the claimed "web crawlers" when their plain meaning is applied (brief, page 7). In particular, Appellant argues that while Heydon performs crawling by multiple worker threads, they are part of a single web crawler, and do not constitute a plurality of web crawlers (brief, paragraph bridging pages 7-8). Additionally, Appellant points out that the reference provides for one FIFO sub-queue per worker thread and therefore, does not assign an identifier to each one of the plurality of web crawlers (brief, page 8).

The Examiner responds to Appellant's arguments by stating that the disclosed worker threads are also web crawlers since they are programs and may, by definition, be executed independently (answer, page 12). The Examiner concludes that each and every worker thread is considered a separate "web crawler" because each is "a program that automatically fetches web pages" (answer, page 13).

A review of the evidence before us shows that Heydon, in Figure 1 and section 3.1, actually discloses a single crawler which includes multiple worker threads. Although crawling and subsequently, downloading and processing documents, are disclosed to be performed by multiple worker threads, the Examiner has not convinced us that whatever downloads documents, such as the threads, are indeed the same as the crawlers. We also remain unconvinced by the Examiner's argument that worker threads are the same as web crawlers because characterizing them as such is not repugnant to the plain meaning of these terms (answer, page 12). The definitions provided by the Examiner notwithstanding, the Examiner has not presented convincing evidence to conclusively establish that the worker threads of Heydon are web crawler programs since threads are only a part of a crawler program. Consequently, we also agree with Appellant that the

FIFO subqueues assigned to each worker thread is not the same as the claimed web crawler identifier assigned to each of the web crawlers. Therefore, absent any evidence or reasoning to show a plurality of web crawlers and a unique identifier assigned to each of them, we are unconvinced that the Heydon anticipates the claimed subject matter of claims 1, 6 and 10 and their 35 U.S.C. § 102 rejection over Heydon cannot be sustained.

35 U.S.C. § 102(e) rejection of claims 1-4 and 6-14 over Najork

The Examiner again characterizes threads 130 (Figure 1; col. 4, lines 62-67) as a plurality of web crawlers (answer, page 5). What a reference teaches is a question of fact. In re Baird, 16 F.3d 380, 382, 29 USPQ2d 1550, 1552 (Fed. Cir. 1994) (citing In re Beattie, 974 F.2d 1309, 1311, 24 USPQ2d 1040, 1041 (Fed. Cir. 1992)). Again, we do not agree with the Examiner that the threads, which are disclosed to be components and a part of a web crawler, may properly be equated with the web crawler itself.

In view of the discussion above, since the claimed multiple web crawlers are absent in Najork, the reference cannot anticipate the claimed subject matter. Accordingly, as the Examiner has failed to meet the burden of providing a prima facie

case of anticipation, the 35 U.S.C. § 102 rejection of claims 1-4 and 6-14 over Najork cannot be sustained.

35 U.S.C. § 102(f) rejection of claims 1-4 and 6-14

The Examiner's position with respect to this rejection, stating that Appellant did not invent the claimed subject matter (answer, page 8), is predicated upon Heydon and Najork disclosing the claimed invention. However, based on our discussion above regarding these two references, we agree with Appellant (brief, page 14) that neither Heydon nor Najork discloses all the limitations recited in the instant claims and therefore fail to support the 35 U.S.C. § 102(f) rejection of the claims.

35 U.S.C. § 102(e) rejection of claims 1-4 and 6-14 over Eichsteadt

With respect to Eichsteadt, the Examiner argues that each processor in Eichsteadt functions as a gatherer or web crawler (answer, page 18). The Examiner concludes that mapping between sub-graphs and processors through an identifier for each processor reads on the claimed "assigning a web crawler identifier to each one of the plurality of web crawlers" (id.). Appellant argues that no web crawler identifier is assigned to each gatherer or processor in Eichsteadt (brief, page 15) while

the only correspondence is made between web-space and the processors (brief, page 16).

Again, we agree with Appellant that no host computer identifier is generated in Eichsteadt that may correspond to a web crawler identifier. In particular, we find the Examiner's characterization of "mapping" between sub-graphs and processors (col. 10, lines 18-21) as "assigning a web crawler identifier to each one of the plurality of web crawlers" to be speculative and insufficient to support a prima facie case of anticipation. The mapping is actually between a processor and sub-graphs of a web-graph which is further defined as "a hierarchical logical structure representing various relationships between information contained within the graph" (col. 4, lines 44-47), which is different from the web crawler identifier. Therefore, although the sub-graphs of a web-graph may be mapped to the processor in Eichsteadt, there is no teachings related to the web crawler identifier assigned to each of the web crawlers or determining a web crawler identifier to which the representation of the host identifier corresponds to. Thus, Eichstaedt cannot anticipate the subject matter of claims 1-4 and 6-14.

35 U.S.C. § 103(a) rejection of claims 15-18 over Eichsteadt and Najork

Regarding the 35 U.S.C. § 103 rejection of the claims, we note that the Examiner further relies on Najork for teaching multiple threads to download and process documents (answer, page 11). However, the Examiner has not pointed to any disclosure in these references that may, in combination, cure the deficiencies of each reference individually, as discussed above with respect to claims 1, 6 and 10. Accordingly, we do not sustain the 35 U.S.C. § 103 rejection of claims 15-18 over Eichsteadt and Najork.

CONCLUSION

In view of the foregoing, the decision of the Examiner rejecting claims 1-4 and 6-14 under 35 U.S.C. § 102 and rejecting claims 15-18 under 35 U.S.C. § 103 is reversed.

REVERSED

JERRY SMITH )
Administrative Patent Judge )
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MAHSHID D. SAADAT ) BOARD OF PATENT
Administrative Patent Judge ) APPEALS
) AND
) INTERFERENCES
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